

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 JMT INC., a California Corporation,
12 Plaintiff,

13 v.

14 INTERMATIC INC., an Illinois
15 Corporation; BROAN-NUTONE,
16 LLC, a Delaware Corporation, and
17 DOES 1 to 10, inclusive,
18 Defendants.

CASE No: 2:15-CV-08603 BRO-JC
c/w 2:15-CV-09320-BRO-JC

DISCOVERY MATTER

AMENDED PROTECTIVE ORDER

18 SENTRY MUTUAL INSURANCE
19 COMPANY, as subrogee of JMT
20 INC.,

21 Plaintiff,

22 v.

23 INTERMATIC INC., an Illinois
24 Corporation; BROAN-NUTONE,
25 LLC, a Delaware Corporation, and
26 DOES 1 to 25, inclusive,
27 Defendants.

28 **1. A. PURPOSES AND LIMITATIONS**

As the parties have represented that discovery in this action is likely to involve production of confidential, proprietary, or private information for which

1 special protection from public disclosure and from use for any purpose other than
2 prosecuting, defending or settling this litigation may be warranted, this Court enters
3 the following Protective Order (“Order”). This Order does not confer blanket
4 protections on all disclosures or responses to discovery. The protections of this
5 Order extend only to the limited information or items that are entitled to
6 confidential treatment under the applicable legal principles. Further, including
7 confidential information in any papers to be filed with the Court does not entitle the
8 parties to file confidential information under seal. Rather, the parties must seek
9 permission from the Court to file material under seal in accordance with Local Rule
10 79-5.2.2 and any pertinent orders of the assigned District Judge and Magistrate
11 Judge.

12 B. GOOD CAUSE STATEMENT

13 In light of the nature of the claims and allegations in this case and the
14 parties’ representations that discovery in this case will involve the production of
15 confidential material, and in order to expedite the flow of information, to facilitate
16 the prompt resolution of disputes over confidentiality of discovery materials, to
17 adequately protect information the parties are entitled to keep confidential, to
18 ensure that the parties are permitted reasonably necessary uses of such material in
19 connection with this action, to address their handling of such material at the end of
20 the litigation, and to serve the ends of justice, a protective order for such
21 information is justified in this matter. The parties shall not designate any
22 information or documents as confidential without a good faith belief that such
23 information or documents have been maintained in a confidential, non-public
24 manner, and that there is good cause or a compelling reason why it should not be
25 part of the public record of this case.

26 2. DEFINITIONS

27 2.1 Action: The consolidated actions titled *JMT Inc. v. Intermatic*
28 *Inc. et al.*, Case No. 2:15-CV-08603 BRO-JC and *Sentry Mutual Insurance*

1 *Company, as subrogee of JMT Inc. v. Intermatic Inc. et al.*, Case No. 2:15-CV-
2 09320-BRO-JC.

3 2.2 Challenging Party: a Party or Non-Party that challenges the
4 designation of information or items under this Order.

5 2.3 “CONFIDENTIAL” Information or Items: information (regardless
6 of how it is generated, stored or maintained) or tangible things that qualify for
7 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
8 the Good Cause Statement.

9 2.4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
10 Information or Items: extremely sensitive “CONFIDENTIAL” Information or
11 Items, the disclosure of which to another Party or Non-Party would create a
12 substantial risk of serious harm that could not be avoided by less restrictive means.

13 2.5 Counsel: attorneys retained to represent a party to this Action and
14 are designated counsel of record, as well as their support staff.

15 2.6 House Counsel: attorneys who are employees of a Party.

16 2.7 Designating Party: a Party or Non-Party that designates
17 information or items that it produces in disclosures or in responses to discovery as
18 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
19 ONLY.”

20 2.8 Disclosure or Discovery Material: all items or information,
21 regardless of the medium or manner in which it is generated, stored, or maintained
22 (including, among other things, testimony, transcripts, and tangible things), that are
23 produced or generated in disclosures or responses to discovery in this matter.

24 2.9 Expert: a person with specialized knowledge or experience in a
25 matter pertinent to the litigation who has been retained by a Party or its Counsel to
26 serve as an expert witness or as a consultant in this Action.

27 2.10 Party: any party to this Action, including all of its officers,
28 directors, employees, consultants, retained experts, and Counsel.

1 2.11 Non-Party: any natural person, partnership, corporation,
2 association, or other legal entity not named as a Party to this action.

3 2.12 Producing Party: a Party or Non-Party that produces Disclosure
4 or Discovery Material in this Action.

5 2.13 Professional Vendors: persons or entities that provide litigation
6 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
7 demonstrations, and organizing, storing, or retrieving data in any form or medium)
8 and their employees and subcontractors.

9 2.14 Protected Material: any Disclosure or Discovery Material that is
10 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
11 ATTORNEYS’ EYES ONLY.”

12 2.15 Receiving Party: a Party that receives Disclosure or Discovery
13 Material from a Producing Party.

14 3. SCOPE

15 The protections conferred by this Order cover not only Protected
16 Material but also (1) any information copied or extracted from Protected Material;
17 (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3)
18 any deposition testimony, conversations, or presentations by Parties or their
19 Counsel that might reveal Protected Material, other than during a court hearing or at
20 trial.

21 Any use of Protected Material during a Court hearing or at trial shall
22 be governed by the Orders of the presiding judge. This Order does not govern the
23 use of Protected Material during a Court hearing or trial.

24 4. DURATION

25 The confidentiality obligations imposed by this Order shall remain in
26 effect, even after final disposition of this litigation, until a Designating party agrees
27 otherwise in writing or a Court Order otherwise directs. Final disposition shall be
28 deemed to be the later of (1) dismissal of all claims in this Action with prejudice; or

1 (2) final judgment herein after the completion and exhaustion of all appeals,
2 rehearings, remands, trials, or reviews of this Action, including the time limits for
3 filing any motions or applications for extension of time pursuant to applicable law.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Limitations: Each Party or Non-Party that designates information
6 or items for protection under this Order must limit any such designation to specific
7 material that qualifies under the appropriate standards, and designate only those
8 parts of material, documents, items, or oral or written communications that qualify
9 so that other portions of the material, documents, items, or communications for
10 which protection is not warranted are not swept unjustifiably within the ambit of
11 this Order.

12 Mass, indiscriminate, or routinized designations are prohibited.
13 Designations that are shown to be clearly unjustified or that have been made for an
14 improper purpose (including but not limited to unnecessarily encumbering the case
15 development process, or imposing unnecessary expenses and burdens on other
16 parties) may expose the Designating Party to sanctions.

17 If it comes to the attention of a Designating Party that information or
18 items that it designated for protection do not qualify for protection, the Designating
19 Party must promptly notify all other Parties and Non-Parties that it is withdrawing
20 the inapplicable designation, with specificity.

21 5.2 Manner and Timing of Designations: Except as otherwise
22 provided in this Order, or as otherwise stipulated or ordered, Disclosure or
23 Discovery Material that qualifies for protection under this Order must be clearly so
24 designated before the material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic
27 documents, but excluding transcripts of depositions), that the Producing Party affix
28 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’

1 EYES ONLY” to each page that contains Protected Material. If only a portion of
2 the information on a page qualifies for protection, the Producing Party must clearly
3 identify the protected portion by making appropriate markings in the margins, and
4 must specify, for each portion, the level of protection being asserted (either
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY”).

7 A Party or Non-Party that makes original documents available for
8 inspection need not designate them for protection until after the inspecting Party
9 has indicated which documents it would like copied and produced. During the
10 inspection and before the designation, all of the material made available for
11 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
12 identified the documents it wants copied and produced, the Producing Party must
13 determine which documents, or portions thereof, qualify for protection under this
14 Order. Then, before producing the specified documents, the Producing Party must
15 affix the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
16 EYES ONLY” legend to each page that contains Protected Material. If only a
17 portion or portions of the material on a page qualifies for protection, the Producing
18 Party also must clearly identify the protected portion(s) (e.g., by making
19 appropriate markings in the margins).

20 (b) for testimony given in deposition, that the Designating Party
21 identifies on the record, before the close of the deposition, that the testimony be
22 separately marked by the Court Reporter as Protected Material. When it appears
23 that substantial portions of the testimony may qualify for protection, but it is
24 impractical to identify separately each portion of testimony that is entitled to
25 protection without unnecessarily delaying the deposition, the Party or Non-Party
26 that sponsors, offers, or gives the testimony may invoke on the record (before the
27 deposition is concluded) a right to have an opportunity to review a rough draft of
28 the transcript, at the expense of the requesting party, and within 10 days after

1 receipt of the rough draft transcript, to identify the specific portions of the
 2 testimony as to which protection is sought and to specify the level of protection
 3 being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 4 ATTORNEYS’ EYES ONLY”), and to advise all other parties of the protection
 5 being sought. Only those portions of the testimony that are appropriately designated
 6 for protection within the 10 days shall be covered by the provisions of this Order. It
 7 shall be the obligation of the Party seeking protection under this Order to ensure, at
 8 the expense of the party designating protection, that in preparing the certified
 9 transcript the court reporter separately binds the pages containing Protected
 10 Material, and affixes to the top of each such page the legend “CONFIDENTIAL” or
 11 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the
 12 Party or Non-Party offering or sponsoring the witness or presenting the testimony;
 13 and

14 (c) for information produced in a form other than documentary
 15 and for any other tangible items, that the Producing Party affix in a prominent place
 16 on the exterior of the container or containers in which the information is stored the
 17 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 18 EYES ONLY.” If only a portion or portions of the information warrants protection,
 19 the Producing Party, to the extent practicable, shall identify the protected portion(s).

20 5.3 Inadvertent Failures to Designate: If timely corrected, an
 21 inadvertent failure to designate qualified information or items does not, standing
 22 alone, waive the Designating Party’s right to secure protection under this Order for
 23 such material. Upon timely correction of a designation, the Receiving Party must
 24 make reasonable efforts to assure that the material is treated in accordance with the
 25 provisions of this Order.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges: Any Party or Non-Party may challenge a
 28 designation of confidentiality at any time that is consistent with the Court’s Civil

1 Trial Order.

2 6.2 Meet and Confer: The Challenging Party shall initiate the dispute
3 resolution process under Local Rule 37-1 et seq.

4
5 6.3 Burden: The burden of persuasion in any proceeding to challenge
6 a designation of confidentiality shall be on the Designating Party. Frivolous
7 challenges or those made for an improper purpose, such as to harass or impose
8 unnecessary expenses and burdens on other parties, may expose the Challenging
9 Party to sanctions. Unless the Designating Party has waived or withdrawn the
10 confidentiality designation, all Parties and Non-Parties shall continue to afford the
11 material in question the level of protection to which it is entitled under the
12 Producing Party's designation until the Court rules on the challenge.

13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

14 7.1 Basic Principles: A Receiving Party may use Protected Material
15 that is disclosed or produced by another Party or Non-Party in connection with this
16 Action only for prosecuting, defending, or attempting to settle this Action. Such
17 Protected Material may be disclosed only to the categories of persons and under the
18 conditions described in this Order. Upon final disposition of the Action, a
19 Receiving Party must comply with the provisions of Section 12 below. Protected
20 Material must be stored and maintained by a Receiving Party at a location and in a
21 secure manner that ensures that access is limited to the persons authorized under
22 this Order.

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items: Unless
24 otherwise Ordered by the Court or permitted in writing by the Designating Party, a
25 Receiving Party may disclose information or items designated "CONFIDENTIAL"
26 only to:

27 (a) Receiving Party's Counsel, as well as employees of said
28 Counsel, to whom disclosure is reasonably necessary for this Action;

1 (b) officers, directors, and employees (including House Counsel)
2 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

3 (c) Receiving Party's Experts to whom disclosure is reasonably
4 necessary for this Action and who have signed the "Acknowledgment and
5 Agreement to Be Bound" (Exhibit A);

6 (d) the Court and its personnel;

7 (e) private court reporters and their staff to whom disclosure is
8 reasonably necessary for this Action and who have signed the "Acknowledgment
9 and Agreement to Be Bound" (Exhibit A);

10 (f) professional jury or trial consultants, mock jurors, and
11 Professional Vendors to whom disclosure is reasonably necessary for this Action
12 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
13 A);

14 (g) the author or recipient of the information or items or a
15 custodian or other person who otherwise possessed or knew the information;

16 (h) during their depositions, witnesses and their attorneys to whom
17 disclosure is reasonably necessary for this Action, provided that:

18 (1) the witnesses and their attorneys sign the
19 "Acknowledgment and Agreement to Be Bound" (Exhibit A), and

20 (2) the witnesses and their attorneys will not be
21 permitted to keep any confidential information, unless otherwise agreed by the
22 Designating Party or ordered by the Court. Pages of transcribed deposition
23 testimony or exhibits to depositions that reveal Protected Material may be
24 separately bound by the court reporter, as requested under Section 5.2(b), and may
25 not be disclosed to anyone except as permitted under this Protective Order; and

26 (i) any mediator or settlement officer, and their supporting
27 personnel, mutually agreed upon by any of the parties engaged in settlement
28 discussions, and who have signed the "Acknowledgment and Agreement to Be

Bound” (Exhibit A).

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: Unless otherwise ordered by the Court or permitted in writing by the Designating party, a Receiving Party may disclose information or items designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) Receiving Party’s Counsel, as well as employees of said Counsel, to whom disclosure is reasonably necessary for this Action;

(b) Receiving Party’s Experts to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the Court and its personnel;

(d) private court reporters and their staff to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(e) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) the author or recipient of the information or items or a custodian or other person who otherwise possessed or knew the information;

(g) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a Court Order issued in other

1 litigation that compels disclosure of any information or items designated in this
 2 Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 3 EYES ONLY,” that Party must:

4 (a) promptly notify the Designating Party, in writing (by fax or
 5 email, if possible) immediately and in no event more than three court days after
 6 receiving the subpoena or order. Such notification shall include a copy of the
 7 subpoena or court order unless prohibited by law;

8 (b) promptly notify in writing the party who caused the subpoena
 9 or Order to issue in the other litigation that some or all of the material covered by
 10 the subpoena or Order is subject to this Protective Order. Such notification shall
 11 include a copy of this Protective Order; and

12 (c) cooperate with the Designating Party whose Protected Material
 13 may be affected in pursuing all reasonable procedures related to the subpoena or
 14 Court Order.

15 If the Designating Party timely seeks a protective order, the Party
 16 served with the subpoena or Court Order shall not produce any information
 17 designated in this Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 18 ATTORNEYS’ EYES ONLY” before a determination by the Court from which the
 19 subpoena or Order issued, unless the Party has obtained Designating Party’s
 20 permission, or unless otherwise required by the law or Court Order. The
 21 Designating Party shall bear the burden and expense of seeking protection in that
 22 Court of its confidential material and nothing in these provisions should be
 23 construed as authorizing or encouraging a Receiving Party in this action to disobey
 24 a lawful directive from another Court.

25 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
 26 PRODUCED IN THIS LITIGATION

27 (a) The terms of this Order are applicable to information produced by
 28 a Non-Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced
2 by Non-Parties in connection with this litigation is protected by the remedies and
3 relief provided by this Order. Nothing in these provisions should be construed as
4 prohibiting a Non-Party from seeking additional protections.

5 (b) In the event that a Party is required, by a valid discovery request,
6 to produce a Non-Party’s confidential information in its possession, and the Party is
7 subject to an agreement with the Non-Party not to produce the Non-Party’s
8 confidential information, then the Party shall:

9 (1) promptly notify in writing the Requesting Party and the Non-
10 Party that some or all of the information requested is subject to a confidentiality
11 agreement with a Non-Party;

12 (2) promptly provide the Non-Party with a copy of the Protective
13 Order in this Action, the relevant discovery request(s), and a reasonably specific
14 description of the information requested; and

15 (3) make the information requested available for inspection by the
16 Non-Party, if requested.

17 (c) If a Non-Party represented by counsel fails to commence the
18 process called for by Local Rules 45-1 and 37-1 within fourteen (14) days of
19 receiving the notice and accompanying information or fails contemporaneously to
20 notify the Receiving Party that it has done so, the Receiving Party may produce the
21 Non-Party’s confidential information responsive to the discovery request. If an
22 unrepresented Non-Party fails to seek a protective order from this court within
23 fourteen (14) days of receiving the notice and accompanying information, the
24 Receiving Party may produce the Non-Party’s confidential information responsive
25 to the discovery request. If the Non-Party timely seeks a protective order, the
26 Receiving Party shall not produce any information in its possession or control that
27 is subject to the confidentiality agreement with the Non-Party before a
28 determination by the Court, unless otherwise required by the law or Court order.

1 Absent a Court order to the contrary, the Non-Party shall bear the burden and
2 expense of seeking protection in this Court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED
4 MATERIAL

5 If a Receiving Party learns that, by inadvertence or otherwise, it has
6 disclosed Protected Material to any person or in any circumstance not authorized
7 under this Protective Order, the Receiving Party must immediately (a) notify in
8 writing the Designating Party of the unauthorized disclosures, (b) use its best
9 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
10 person or persons to whom unauthorized disclosures were made of all the terms of
11 this Order, and (d) request such person or persons to execute the "Acknowledgment
12 and Agreement to Be Bound" (Exhibit A).

13 When a Producing Party gives notice to Receiving Parties that certain
14 inadvertently produced material is subject to a claim of privilege or other
15 protection, the obligations of the Receiving Parties are those set forth in Federal
16 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
17 whatever procedure may be established in an e-discovery order that provides for
18 production without prior privilege review. Pursuant to Federal Rule of Evidence
19 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
20 of a communication or information covered by the attorney-client privilege or work
21 product protection, the parties may incorporate their agreement into this Order.

22 11. MISCELLANEOUS

23 11.1 Right to Further Relief: Nothing in this Order abridges the right
24 of any Party to seek its modification by the Court in the future.

25 11.2 Right to Assert Other Objections: No Party waives any right it
26 otherwise would have to object to disclosing or producing any information or item
27 on any ground not addressed in this Protective Order, and no Party waives any right
28 to object on any ground to the use in evidence of any of the material covered by this

1 Protective Order.

2 11.3 Filing Protected Material: A Party that seeks to file any papers
3 with the Court that contain any Protected Material must seek permission from the
4 Court to file the Protected Material under seal in compliance with Local Rule 79-
5 5.2.2 and any pertinent Orders of the District Judge and Magistrate Judge. Protected
6 Material may only be filed under seal pursuant to a Court Order authorizing the
7 sealing of the specific Protected Material at issue. If a Party's request to file
8 Protected Material under seal is denied by the Court, then the Receiving Party may
9 file the information in the public record unless otherwise instructed by the Court.

10 12. FINAL DISPOSITION

11 Within 60 days after the final disposition of this Action, as defined in
12 Section 4, each Receiving Party must return all Protected Material to the Producing
13 Party or destroy such material. As used in this subdivision, "all Protected Material"
14 includes all copies, abstracts, compilations, summaries, and any other format
15 reproducing or capturing any of the Protected Material, except that Counsel may
16 retain an archival copy of all pleadings, motion papers, trial, deposition, and
17 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
18 expert reports, attorney work product, and consultant and expert work product, even
19 if such materials contain Protected Material. Any such archival copies that contain
20 or constitute Protected Material remain subject to this Protective Order as set forth
21 in Section 4.

22 Whether the Protected Material is returned or destroyed, the Receiving
23 Party must submit a written certification to the Producing Party (and, if not the
24 same person or entity, to the Designating Party) by the 60-day deadline that (1)
25 identifies (by category, where appropriate) all the Protected Material that was
26 returned or destroyed, and (2) affirms that the Receiving Party has not retained any
27 copies, abstracts, compilations, summaries, or any other format reproducing or
28 capturing any of the Protected Material.

13. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO ORDERED.

DATED: February 23, 2016

/s/
Honorable Jacqueline Chooljian
United States Magistrate Judge

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____, declare under penalty of perjury under the laws of the United States of America and the State of California that I have read in its entirety and understand the terms of the Protective Order issued by the United States District Court for the Central District of California on February 23, 2016 in the consolidated cases titled *JMT Inc. v. Intermatic Inc., et al.*, Case No. 2:15-CV-08603 BRO-JC and *Sentry Mutual Insurance Company, as subrogee of JMT Inc. v. Intermatic Inc. et al.*, Case No. 2:15-CV-09320-BRO-JC. I agree to comply with and to be bound by all the terms of the Protective Order and I understand and acknowledge that my failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of the Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of the Protective Order, even if such enforcement proceedings occur after termination of this action.

Dated: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

Address: _____